

## INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("**Agreement**") by and between the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian tribe ("**Tribe**") and the County of Riverside, California ("**County**") is dated and effective as of September \_\_, 2019. Tribe and County are sometimes hereinafter referred to as a "**Party**" and collectively as the "**Parties.**" The terms "**Tribe**" and "**County**" as used herein shall include the Parties' governmental entities, departments, and officials unless otherwise stated.

### RECITALS

WHEREAS, the Tribe is a federally recognized Indian tribe located on federal trust lands, which are located within the geographic boundaries of the cities of Palm Springs, Cathedral City, Rancho Mirage, and the County of Riverside; and

WHEREAS, the Tribe has inhabited the Coachella Valley and the surrounding mountains since time immemorial; and

WHEREAS, the Agua Caliente Indian Reservation was established through Executive Order signed by President Ulysses S. Grant on May 15, 1876 and enlarged through Executive Order signed by President Rutherford B. Hayes on September 29, 1877, affirming the Tribe's sovereignty and land-base; and

WHEREAS, under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* ("**IGRA**"), the Tribe may engage in gaming as a means of promoting Tribal economic development, self-sufficiency, and strong Tribal government; and

WHEREAS, IGRA generally requires that Class III gaming be conducted pursuant to a Tribal-State Class III gaming compact; and

WHEREAS, on or about August of 2016, the Tribe entered into a gaming compact with the State of California, as contemplated under IGRA, with an effective date of October 31, 2016 (the "**Compact**"); and

WHEREAS, the Tribe desires to operate tribal economic development projects in a manner that benefits the Tribe, its members, and the community as a whole, and the County recognizes the mutual benefit that can be derived if those goals are achieved; and

WHEREAS, the Tribe has successfully developed and now operates and maintains two Existing Gaming Facilities (defined below) pursuant to IGRA and the Compact; and

WHEREAS, the Tribe has determined that a new gaming facility (the "**New Gaming Facility**") within the City of Cathedral City ("**City**"), featuring gaming activities authorized under IGRA and the Compact, would be a way in which to generate independent Tribal resources to

provide for the health, education, employment, government, general welfare, safety, and cultural needs of the Tribe; and

WHEREAS, in addition to the Existing Gaming Facilities, which have become major tourist attractions, as regional employers, bringing millions of dollars into the local community, the Tribe has successfully developed its lands with other economic development or governmental projects that serve the Tribe and the community, including the Agua Caliente Casino Resort Spa, Village Traditions condominium residential project, Twin Palms single family residential project, Trading Post solar project, Heritage Plaza solar project, Indian Canyons Golf Resort, Indian Canyons, and Agua Caliente Cultural Museum; and

WHEREAS, Section 11.7 of the Compact requires that before commencement of a "Project," as defined in the Compact, the Tribe must engage in certain specified environmental review processes and further provides for the Tribe and the County and any impacted city to enter into an "Intergovernmental Agreement" for: (i) timely mitigation of any "Significant Effect on the Off-Reservation Environment," as defined in the Compact; (ii) compensation for law enforcement, fire protection, emergency medical services, and any other public services to be provided the Tribe related to its gaming operations; (iii) reasonable compensation for programs designed to address and treat gambling addiction; and (iv) mitigation of any effect on public safety attributable to the Project; and

WHEREAS, the Parties recognize that this Agreement therefore is an important and mutually beneficial means for furthering the government-to-government relationship between the Parties and in building trust, mutual respect, good will, and cooperation for the benefit of the entire community; and

WHEREAS, the Tribe now anticipates the construction of the New Gaming Facility, which constitutes a "Project" under the Compact. In accordance with the Compact, the Bureau of Indian Affairs has properly issued a Notice of Preparation of An Environmental Assessment / Tribal Environmental Impact Report ("EA/TEIR") to the State Clearinghouse in the State Office of Planning and Research and the County for distribution to the public; posted the Notice of Preparation on a publicly accessible website; filed a copy of the Draft EA/TEIR and the Notice of Completion of the Draft EA/TEIR with the State Clearinghouse, State Gaming Agency, County and City, California Department of Justice, and Office of the Attorney General; posted a copy of the Notice of Availability/Completion of the Draft EA/TEIR and a copy of the Draft EA/TEIR on a publicly accessible website; submitted the requisite copies of the Draft EA/TEIR and Notice of Availability/Completion of the Draft EA/TEIR to the County; satisfied the forty-five (45) day public comment period; and shall upon completion of the federal fee-to-trust acquisition process prepare, certify, and make available to the County, State Clearinghouse, State Gaming Agency, California Department of Justice, and Office of the Attorney General a Final EA/TEIR; and

WHEREAS, the Tribe has also formally offered to begin negotiations of the Intergovernmental Agreement with the County; and

WHEREAS, it is in the best interests of both Parties to enter into this Agreement for the purposes set forth herein.

NOW, THEREFORE, the Parties agree as follows:

## **AGREEMENT**

### **SECTION 1. PURPOSES OF AGREEMENT**

1.1 The purpose of this Agreement is to set forth certain agreements of the Parties that are intended to:

(a) Assure the timely implementation of measures for mitigating any Significant Effect on the Off-Reservation Environment, as set forth in this Agreement; and

(b) Establish a mutually agreeable process to identify and mitigate any Significant Effect on the Off-Reservation Environment; and

(c) Identify the process to resolve disputes that may arise between the County and the Tribe under this Agreement; and

(d) Create a framework for continuing to build and maintain a mutually beneficial government-to-government relationship between the Tribe and the County; and

(e) Identify ways for the Tribe and the County to work together to provide additional services and benefits to the Tribal community and the County.

### **SECTION 2. DEFINITIONS**

Capitalized words not otherwise specifically defined in this Agreement shall have the definitions of such words as may be set forth in the Compact. The following terms shall be defined in this Agreement as set forth in this Section:

2.1 **“Agreement”** means this Intergovernmental Agreement, which shall be deemed to be the Intergovernmental Agreement between the Parties as required under Section 11.7 of the Compact.

2.2 **“City”** means the City of Cathedral City, California, a California municipal corporation.

2.3 **“County”** means the County of Riverside, California.

2.4 **“Compact”** means the Tribal-State Compact between the State of California and the Agua Caliente Band of Cahuilla Indians effective October 31, 2016.

2.5 **“EA”** means an environmental assessment prepared by the Bureau of Indian Affairs pursuant to the requirements of the National Environmental Policy Act (NEPA; 42 United States Code [USC] § 4321 *et seq.*).

2.6 **“Effective Date”** means the date this Agreement is executed by both Parties and so designated above in the introduction to this Agreement.

2.7 **“Gaming Device”** means a Gaming Device as defined in Section 2.10 of the Compact.

2.8 **“IGRA”** means the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*

2.9 **“Mitigation Measures”** means the Tribe’s obligations and payments set forth in subsection 3.3 below, which shall provide final mitigation with respect to the New Gaming Facility.

2.10 **“New Gaming Facility”** means a “Gaming Facility” as defined in Section 2.12 of the Compact, which the Tribe intends to construct on approximately 13.6-acres bordered by East Palm Canyon Drive/Highway 111 on the south, Date Palm Drive on the east, Buddy Rogers Avenue on the north, and commercial and vacant parcels within the City to the west, and which is within the geographical boundaries of the City and contiguous to the Reservation, and also within the County; and

2.11 **“Reservation”** means the Agua Caliente Indian Reservation and includes land within the exterior boundaries of the Reservation as established by Presidential Executive Order, federal patent, or deed, and any other lands held in trust by the United States for the Tribe.

2.12 **“Project”** means an activity defined as a “Project” in Section 2.25 of the Compact.

2.13 **“Significant Effect(s) on the Off-Reservation Environment”** shall be as defined in Section 2.27 of the Compact.

2.14 **“Tribal Environmental Impact Report”** or **“TEIR”** is the report described in, and subject to, Section 11.1 of the Compact.

2.15 **“Tribe”** means the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian tribe.

2.16 **“Term”** means the term of this Agreement as provided in subsection 11.7 of this Agreement.

### **SECTION 3     NEW GAMING FACILITY EXPANSION MITIGATION MEASURES**

**3.1     New Gaming Facility.** The Parties acknowledge that the establishment of the New Gaming Facility may create off-Reservation impacts, including, but not limited to, the generation of vehicle traffic and traffic-related events; law enforcement services; fire and emergency medical services; noise, light, and related factors; and other effects. The Parties also acknowledge that the New Gaming Facility will provide substantial benefits to the Tribe, City, and surrounding communities, including increased employment, an important market for local vendors, and an attraction to patrons, tourists, and revenues from out of the area.

#### **3.2     New Gaming Facility Intergovernmental Agreement.**

(a)     The Parties recognize that both the positive and negative effects of the New Gaming Facility on the interests of the Parties may be difficult to quantify, but in the government-to-government spirit that underlies this Agreement, and in order to address Significant Effects on the Off-Reservation Environment that the New Gaming Facility may cause and resolve differences of opinions between the Tribe and the County as to the extent and materiality of any such Effects, the Parties have agreed to add certain mitigation measures that take all of those positive and negative effects into account. The Mitigation Measures embodied in this Agreement are intended to constitute the Intergovernmental Agreement between the Tribe and the County to the extent required under Section 11.7 of the Compact with respect to the Gaming Facility Expansion.

(b)     The Tribe and the County agree that any Significant Effect on the Off-Reservation Environment from the New Gaming Facility will be adequately mitigated by the Tribe as required by the Compact through its mitigation efforts identified in the Final EA/TEIR and the Mitigation Measures provided in subsection 3.3 below.

**3.3     Mitigation Measures.** The Tribe and the County agree that the mitigation noted in subsections 3.2(a) and (b), above, appears to be sufficient to mitigate any Significant Effect on the Off-Reservation Environment given the already existing commitments between Tribe and the County, outside of this Agreement, to provide annual funding to address County-operated gambling addiction, mental health, and substance abuse programs in the area in and around Cathedral City and the Coachella Valley within Riverside County. To ensure sufficient annual funding to ameliorate potential effects, after the opening of the New Gaming Facility, at the County's request, the Tribe and County shall meet and confer to discuss whether the County has been impacted by any Significant Effect on the Off-Reservation Environment attributable in whole or in part to the New Gaming Facility, including but not limited to impacts relating to gambling addiction, mental health, and substance abuse. To the extent the County demonstrates a nexus between the New Gaming Facility and a Significant Effect on the Off-Reservation Environment attributable in whole or in part to the New Gaming Facility, the Tribe shall provide reasonable compensation to address, ameliorate, reduce, and/or compensate the County for such demonstrated effect. If the Parties dispute the amount of reasonable compensation, the Tribe and County shall schedule a follow up meeting to allow the County to

provide additional data and information at the subsequent meeting. The Tribe shall give written notice of any such meeting(s) pursuant to the Notice provisions of this Agreement.

**3.4 Regular Meetings of the Parties.** In an effort to maintain and promote good government-to-government relations between the Tribe and the County, the Parties' designated representatives shall meet on a regular basis, every six (6) months to discuss issues of mutual interest.

#### **SECTION 4. FUTURE ENVIRONMENTAL REVIEW AND MEASURES**

**4.1** For any future changes to the New Gaming Facility beyond the scope contemplated in the Final EA/TEIR, the Parties agree to follow the requirements of the Compact or any requirements of any State Gaming Compact between the Tribe and the State of California then in place. The Parties agree to commit to having a continuing dialogue with regard to mutual collaboration on future governmental projects benefiting both the Tribe and County in the areas of roadway infrastructure, law enforcement, public safety, and other such programs as may be feasible.

#### **SECTION 5. EFFECT OF FEDERAL LAWS REGARDING ENVIRONMENTAL MATTERS**

**5.1** Notwithstanding any provision to the contrary, the Parties acknowledge that the Tribe is subject to federal laws and regulations regarding the environment and health and safety, including, but not limited to, the Clean Water Act, Safe Drinking Water Act, Endangered Species Act, IGRA, and the Occupational Safety and Health Act, and permit conditions including, but not limited to, conditions in any National Pollution Discharge Elimination System permits. Except as provided below, the Parties agree that the matters regulated by these laws, regulations, and permits shall be matters that are between the Tribe and the federal agency having jurisdiction over such statutes, regulations, and permits, and a violation of such statutes, regulations, and permits shall not be considered in conflict with this Agreement or a required part of it. Consistent with the above, the County shall retain whatever rights it may have with respect to participation in the matters regulated by these laws, regulations, and permits, including without limitation, the rights to take such administrative or legal actions as may be necessary to protect its rights in accordance with the statutes and regulations applicable to the federal agency conducting the proceedings.

**5.2** Any dispute or disagreement the County has with a federal process or its outcome thus shall only be subject to the remedies available in such process and not through the dispute resolution or other provisions of this Agreement.

**5.3** Nothing herein shall be construed as limiting the Parties' respective rights to reach agreement on a voluntary basis with each other over such matters outside such federal process, subject to applicable law and the sole discretion of each Party as to whether or not to negotiate or agree on such matters outside the context of the federal process itself.

## SECTION 6. CONFIDENTIALITY OF INFORMATION

6.1 The Parties acknowledge and agree that this Agreement is subject to the requirements of the California Public Records Act (Government Code section 6250 *et seq.*). Each Party (a **“Receiving Party”**) acknowledges that the other Party (a **“Disclosing Party”**) may submit information to the Receiving Party that the Disclosing Party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (California Civil Code section 3426 *et seq.*), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (including but not limited to Government Code sections 6254 and 6255) or other act. In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages, or series of pages as confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement (**“Requestor”**) for production, inspection, and/or copying of information designated by a Party as confidential information (such designated information, the **“Confidential Information”**), the Receiving Party shall notify the Disclosing Party as soon as practical that such request has been made. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.

6.2 If required by applicable federal, state, local, or Tribal law, statute, ordinance, a court, governmental authority, or agency having jurisdiction over a Party, including the California Public Records Act, that Party may release Confidential Information, or a portion thereof, as required by the applicable law, statute, ordinance, decision, order or regulation. In the event a Party is required to release Confidential Information, such Party shall notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses), at its sole cost, to cause the recipient of the Confidential Information to treat such information in a confidential manner, and to prevent such information from being disclosed or otherwise becoming part of the public domain.

6.3 Except as provided in this Section and the California Public Records Act, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party’s prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to their respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement.

## **SECTION 7. DISPUTE RESOLUTION**

**7.1 Dispute Resolution Process.** In recognition of the government-to-government relationship of the Tribe and the County, the Parties shall make their best efforts to resolve disputes that arise under this Agreement by good faith negotiations whenever possible. Therefore, except for the right of either Party to seek injunctive relief against the other when circumstances are deemed to require immediate relief, the Tribe and the County shall seek to resolve disputes by first meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of the performance and compliance of the terms, provisions, and conditions of this Agreement as follows:

(a) Either Party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth the facts giving rise to the dispute and with specificity, the issues to be resolved.

(b) The other Party shall respond in writing to the facts and issues set forth in the notice within fifteen (15) days of receipt of the notice, unless both parties agree in writing to an extension of time.

(c) The Parties shall meet and confer in good faith by telephone or in person in an attempt to resolve the dispute through negotiation within thirty (30) days after receipt of the notice set forth in subsection 7.1(a) above, unless both Parties agree in writing to an extension of time.

(d) If the dispute is not resolved to the satisfaction of the Parties after the first meeting, either Party may seek to have the dispute resolved by an arbitrator in accordance with this Section 7, but neither Party shall be required to agree to submit to arbitration.

(e) Disputes that are not otherwise resolved by arbitration or other mutually agreed means may be resolved in the United States District Court in the judicial district and division where the Tribe's New Gaming Facility is located, or if those federal courts lack jurisdiction, in any state court of competent jurisdiction in or over the County. The disputes to be submitted to court action include, but are not limited to, claims of breach of this Agreement. Notwithstanding any other provision of law or this Agreement, neither the County nor the Tribe shall be liable for damages or attorney fees in any action based in whole or in part on the fact that the Parties have either entered into this Agreement, or have obligations under this Agreement. The Parties are entitled to all rights of appeal permitted by law in the court system in which the action is brought.

(f) In no event may the Tribe be precluded from pursuing any arbitration or judicial remedy against the County on the ground that the Tribe has failed to exhaust its County administrative remedies, and in no event may the County be precluded from pursuing any arbitration or judicial remedy against the Tribe on the ground that the County has failed to exhaust any Tribal administrative remedies.



**7.2 Arbitration Rules between the Tribe and the County.** Arbitration between the Tribe and the County shall be conducted before a JAMS arbitrator in accordance with JAMS Comprehensive Arbitration Rules. Discovery in the arbitration proceedings shall be governed by Section 1283.05 of the California Code of Civil Procedure, provided that no discovery authorized by that Section may be conducted without leave of the arbitrator. The Parties shall equally bear the cost of JAMS and the JAMS arbitrator. Either Party dissatisfied with the award of the arbitrator may at the Party's election invoke the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent). In any JAMS arbitration under this subsection 7.2, the Parties will bear their own attorney's fees. The arbitration shall take place within seventy-five (75) miles of the Gaming Facility, or as otherwise mutually agreed by the Parties and the Parties agree that either Party may file a state or federal court action to (i) enforce the Parties' obligation to arbitrate, (ii) confirm, correct, or vacate the arbitral award rendered in the arbitration in accordance with Section 1285 *et seq.* of the California Code of Civil Procedure, or (iii) enforce or execute a judgment based upon the award. In any such action brought with respect to the arbitral award, the Parties agree that venue is proper in any state court located within the County of Riverside or in any federal court located in the Central District of California, Eastern Division and all related appellate courts.

**7.3 No Waiver or Preclusion of Other Means of Dispute Resolution.** This Section 7 shall not be construed to waive, limit, or restrict any remedy to address issues not arising out of this Agreement that is otherwise available to either Party, nor shall this Section 7 be construed to preclude, limit, or restrict the ability of the Parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation.

## **SECTION 8. NOTICES**

**8.1** Notices pursuant to this Agreement and service of process in any judicial or arbitration proceeding is waived in favor of delivery of documents by (i) delivery by a reputable document delivery service, such as, but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (ii) by Certified Mail – Return Receipt Requested to the following:

**8.2** For the Tribe:

Tribal Chairperson  
Agua Caliente Band of Cahuilla Indians  
5401 Dinah Shore Drive  
Palm Springs, California 92264  
Tel: (760) 699-6920

With a copy simultaneously delivered to:

General Counsel  
Agua Caliente Office of General Counsel

5401 Dinah Shore Drive  
Palm Springs, California 92264  
Tel: (760) 699-6952

8.3 For the County:

County Executive Officer  
Riverside County Executive Office  
4080 Lemon St., 4<sup>th</sup> Floor  
Riverside, CA 92501  
Tel: (951) 955-1110

With a copy simultaneously delivered to:

County Counsel  
County of Riverside, Office of County Counsel  
3960 Orange Street, Suite 500  
Riverside, CA 92501  
Tel: (951) 955-6300

8.4 Either Party may change the names and addresses to which notices and service of process may be delivered by written notice to such persons as listed in the subsection or by subsequent notice of changes.

## **SECTION 9. MUTUAL LIMITED WAIVER OF SOVEREIGN IMMUNITY**

9.1 The Parties agree that the Parties' waiver of immunity from arbitration or suit, or the enforcement of any order or judgment related thereto, is limited to the express provisions of Section 7 of this Agreement, and neither the agreement to arbitrate nor any other provision of this Agreement shall be construed as creating any implied waiver of such immunity.

9.2 The Parties each expressly covenant and agree that they may each sue and be sued, including the resolution of disputes in arbitration and the judicial enforcement thereof, as provided in Section 7 above, solely to resolve any controversy arising from this Agreement or to enforce or interpret the terms and conditions of this Agreement, as provided for in this Agreement. The Parties expressly agree to waive governmental immunities, including sovereign immunity, in connection with any claims arising from this Agreement, as provided for herein solely for the enforcement of any arbitral award, or judgment to enforce such award. The Parties further consent to the jurisdiction of an arbitrator and/or specified court under this Agreement including the consent to be sued and bound by a lawful order or judgment, to the extent provided for herein. Each of the Parties represent that its agreement to such dispute resolution processes and waivers has been effectively and lawfully granted and that nothing further needs to be done to effectuate those processes.

9.3 With respect to any action arising out of this Agreement for which there is a waiver of sovereign immunity, the Tribe and County expressly consent to any state court located within the County of Riverside or in any federal court located in the Central District of California, Eastern Division, and all related appellate courts, and/or an arbitrator selected pursuant to this Agreement and specifically waive sovereign immunity for that purpose. The Parties specifically agree that the applicable court shall have jurisdiction to enter judgments enforcing rights and remedies provided in this Agreement, which shall be binding and enforceable on the Parties, subject to the limitations set forth in this Agreement. No Party to this Agreement shall contest jurisdiction or venue of the above-referenced courts, provided their jurisdiction and venue are invoked in the order specified, but only for disputes or claims arising out of this Agreement. Neither the Tribe nor the County shall plead or invoke the doctrine of exhaustion of Tribal or other administrative remedies, defenses of immunity, or indispensable parties beyond those contemplated in this Agreement.

9.4 The County and the Tribe may not join or consent to the joinder of any third party to any action (including but not limited to any arbitration) contemplated herein, unless failure to join such party would deprive the court or arbitration tribunal of jurisdiction; provided that nothing in this Agreement shall be construed to constitute a waiver of sovereign immunity or other protection from lawsuit (or other dispute resolution process), or the effect, orders, or judgments thereof, of either the Tribe or the County with respect to any claim of any kind by any such third party. In the event of intervention by any third party into any such action without the consent of the Tribe and the County, nothing herein shall be construed to constitute a waiver of any immunity with respect to such third party, and no arbitrator or court shall have jurisdiction to any award any relief or issue any order as against the County or Tribe with respect to such third party in that or any other proceeding.

## **SECTION 10. REVIEW UNDER CALIFORNIA ENVIRONMENTAL QUALITY ACT**

10.1 Pursuant to California Government Code section 12012.46, and in deference to Tribal sovereignty, the approval and execution of this Agreement by the Parties is not a project within the meaning of the California Environmental Quality Act, California Public Resources Code sections 21000 *et seq.* (“CEQA”) because this Agreement has been negotiated pursuant to the express authority of the Compact, specifically Section 11.7 of the Compact, and because the Agreement only establishes a source of funds for potential future County actions that are otherwise required as a matter of law and does not itself approve any development, including the Gaming Facility Expansion.

## **SECTION 11. MISCELLANEOUS PROVISIONS**

11.1 **No Authority over Tribal Activities.** Nothing in this Agreement is intended to confer or expand the jurisdiction of any local, state, or federal agency or other governmental body, nor is this Agreement intended to infringe or otherwise usurp the authority of any regulatory body including local, state, federal, or Tribal agencies that may have jurisdiction over or related to Tribal activities, development, or Projects. Further, nothing in this Agreement shall

be construed to relieve the Tribe's obligation to comply with the National Environmental Policy Act ("NEPA") as may be required as part of any trust application or any other Project requirement.

**11.2 No Third Party Beneficiaries.** This Agreement is not intended to, and shall not be construed to, create any right on the part of a third party including, without limitation, no rights in any interested persons, nor does it create any private right of action for any third party nor permit any third party to bring an action to enforce any of its terms.

**11.3 Final Agreement.** This Agreement contains the entire agreement of the Parties as to the subject matter herein and supersedes any other agreements of the Parties to the contrary. However, this Agreement shall not prohibit any future agreements contemplated by the Parties. This Agreement is intended both as the final expression of the agreement between the Parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement consistent with California Code of Civil Procedure section 1856. No modification or amendment of this Agreement shall be effective unless and until such modification or amendment is evidenced by a writing approved and signed by the Parties.

**11.4 Severability of Provisions.** The invalidity of any provisions or portion of this Agreement as determined by a court of competent jurisdiction or any State or federal agency having jurisdiction and thereof and the authority to do so, shall not affect the validity of any other provisions of this Agreement or the remaining portions of the applicable provisions, unless such provision is material to the reasonable expectation of the Parties. Without limiting the foregoing, if any provision of the Agreement is declared invalid as aforesaid, then the Parties shall use their best efforts to renegotiate the terms of the invalid provisions.

**11.5 Force Majeure.** The Parties shall not be liable for any failure to perform, or for delay in performance of a Party's obligations, and such performance shall be excused for the period of the delay and the period of performance shall be extended when a force majeure event occurs; provided, however, that the Party whose performance is prevented or delayed by such event or force majeure shall give prompt written notice (*i.e.*, within seventy-two (72) hours of the event) of such event to the other Party. For purposes of this subsection, the term "**force majeure**" shall include, without limitation, war, epidemic, rebellion, riot, civil disturbance, earthquake, fire, flood, acts of governmental authorities (other than the Tribe or County), acts of God, acts of terrorism (whether actual or threatened), acts of public enemy and in general, any other severe causes or conditions beyond the reasonable control of the Parties, the consequences of which in each case, by exercise of due foresight such Party could not reasonably have been expected to avoid, and which by the exercise of due diligence it would not have been able to overcome, when such an event prevents the Tribe from performing at a level sufficient to meet its obligations under this Agreement due to substantial changes in the Tribe's ability to offer gaming activities at the current level, ceasing gaming or hotel operations for an extended period, or prevents the County from meeting its obligations under this Agreement due to an interruption of County government operations. An interruption of performance, or the delayed occurrence of any event, under this Agreement caused by an event or force majeure, the Party so excused

shall promptly, diligently, and in good faith take all reasonable action required in order for it to be able to commence or resume performance of its obligations under this Agreement.

**11.6 Governing Law.** This Agreement shall be construed according to the application of federal and California substantive law to the extent not inconsistent with the express provisions of this Agreement, unless federal law as to the Tribe or the County, or California law as to the County, prohibits the Parties from abiding by such express provision, in which case the provision will be deemed to be invalid and resolved, if possible, under the severability provisions in subsection 11.4 hereof. Notwithstanding the foregoing, California rules of construction shall be applied in interpreting this Agreement. This Agreement shall be deemed to have been drafted jointly by the Parties and shall not be construed as having been drafted by, or construed against, one party against another.

**11.7 Term; Obligations to Continue.** The Term of this Agreement shall be from the Effective Date until the expiration or earlier termination of the Compact as now exists or as may be amended, restated, or extended by the Tribe and the State to provide for the use of Gaming Devices at the New Gaming Facility, unless sooner terminated pursuant to the terms of this Agreement or extended by mutual agreement of the Parties. Unless specifically designated otherwise, all of the Parties' obligations under this Agreement shall continue through the Term, including any extensions thereof. Notwithstanding the end of the Term, any covenant, term, or provision of this Agreement which, in order to be effective, or is necessary to enforce an unfulfilled material term of this Agreement or obligation that may continue beyond the end of the Term shall survive termination.

**11.8 Duplicate Originals.** At least two (2) copies of this Agreement shall be signed and exchanged by the Parties each of which shall be considered an original document.

**11.9 Approval.** Each Party's execution, delivery, and performance of this Agreement shall be approved by each Party's respective governing body, which shall provide that the Party shall not enact a law impairing the rights and obligations under this Agreement.

**11.10 Obligation on Related Entities.** This Agreement binds the Parties and their departments, affiliates, agents, representatives, successors, contractors, officials, and related entities, which such Agreement shall also be reflected in a resolution of each Party's respective governing body approving the Agreement.

**11.11 Authority/Authorization.** The County and Tribe each represent and warrant that each has performed all acts precedent to adoption of this Agreement, including, but not limited to, matters of procedure and notice and each has the full authority to execute this Agreement and perform its obligations in accordance with the above terms and conditions, and that the representative(s) executing this Agreement on behalf of each Party is duly authorized to so execute and deliver the Agreement.

IN WITNESS WHEREOF, the Parties hereby execute and enter into this Agreement with the intent to be bound thereby through their authorized representatives whose signatures are affixed below.

**AGUA CALIENTE BAND OF CAHUILLA INDIANS**

By:   
Jeff L. Grubbe, Chairman

Attest

By:   
Vincent Gonzales III, Secretary/Treasurer

Approved as to Form:

By:   
John T. Plata, General Counsel

**County of Riverside**

BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA

By: \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST:  
KECIA R. HARPER  
Clerk of the Board

By: \_\_\_\_\_  
Deputy

Approved as to Form:

GREGORY P. PRIAMOS, COUNTY COUNSEL

By:  \_\_\_\_\_  
Melissa R. Cushman, Deputy County Counsel